

## 1 (Pages 1 to 4)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p>1        UNITED STATES DISTRICT COURT 2        SOUTHERN DISTRICT OF OHIO 3        WESTERN DIVISION 4</p> <hr/> <p>5        : 6        BESSIE JONES, ADMINISTRATRIX : of the ESTATE of NATHANIEL : JONES, DECEASED, et al : 7        : CASE NO. Plaintiffs, : 1:04CV616 8        : vs. : 9        : CITY OF CINCINNATI, et al., : 10      : Defendants. : 11      : ----- 12 13 14      DEPOSITION OF: JAY JOHNSTONE 15      TAKEN: By the Plaintiffs 16      DATE: September 9, 2009 17      TIME: Commencing at 9:26 a.m. 18      PLACE: Offices of: Freking &amp; Betz LLC 525 Vine Street Sixth Floor Cincinnati, Ohio 45202 21      BEFORE: Barbara A. Thacker, RPR Notary Public-State of Ohio 22 23 24</p>	<p>1</p> <p>1        public-court reporter and transcribed by her out of the 2        presence of the witness; that the transcribed 3        deposition is to be submitted to the witness for 4        examination and signature; and that signature may be 5        affixed out of the presence of the notary public-court 6        reporter.</p> <p>7                  I N D E X</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 70%;">8        JAY JOHNSTONE</th> <th style="text-align: right; width: 30%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>9        CROSS-EXAMINATION BY MR. THOMPSON</td> <td style="text-align: right;">4</td> </tr> <tr> <td>10      EXAMINATION BY STACKPOLE</td> <td style="text-align: right;">-</td> </tr> <tr> <td>11      EXAMINATION BY MR. HARDIN</td> <td style="text-align: right;">-</td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14      E X H I B I T S</td> <td></td> </tr> <tr> <td>15      JOHNSTONE EXHIBITS</td> <td style="text-align: right;">MARKED</td> <td style="text-align: right;">REFERENCED</td> </tr> <tr> <td>16      1</td> <td style="text-align: right;">13</td> <td></td> </tr> <tr> <td>17      2</td> <td style="text-align: right;">53</td> <td></td> </tr> <tr> <td>18      PREVIOUSLY-MARKED</td> <td></td> <td style="text-align: right;">REFERENCED</td> </tr> <tr> <td>19      Slade 2</td> <td style="text-align: right;">10, 39</td> <td></td> </tr> <tr> <td>20      Slade 3</td> <td style="text-align: right;">36</td> <td></td> </tr> <tr> <td>21      Slade 4</td> <td style="text-align: right;">44</td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> </tbody> </table> <p>2</p> <p>1        APPEARANCES: 2        On behalf of the Plaintiffs: 3        TOD J. THOMPSON, ESQ. of 4        Freking &amp; Betz LLC 5        525 Vine Street Sixth Floor Cincinnati, Ohio 45202 6 7        On behalf of the Defendants: 8        PETER J. STACKPOLE, ESQ. of 9        City of Cincinnati Solicitor's Office 10      801 Plum Street Room 214 Cincinnati, Ohio 45202 11 12      On behalf of the Defendant Police Officers in their Individual Capacity: 13      DONALD E. HARDIN, ESQ. of 14      Hardin, Lefton, Lazarus &amp; Marks LLC Cincinnati Club Building 15      30 Garfield Place Suite 915 Cincinnati, Ohio 45202 16 17      - - - 18      S T I P U L A T I O N S 19      It is stipulated by and among counsel for the respective parties that the deposition of JAY JOHNSTONE, a witness herein, may be taken at this time by Counsel for the Plaintiffs as upon Cross-Examination pursuant to the Federal Rules of Civil Procedure; that the deposition may be taken in stenotypy by the notary</p>	8        JAY JOHNSTONE	PAGE	9        CROSS-EXAMINATION BY MR. THOMPSON	4	10      EXAMINATION BY STACKPOLE	-	11      EXAMINATION BY MR. HARDIN	-	12		13		14      E X H I B I T S		15      JOHNSTONE EXHIBITS	MARKED	REFERENCED	16      1	13		17      2	53		18      PREVIOUSLY-MARKED		REFERENCED	19      Slade 2	10, 39		20      Slade 3	36		21      Slade 4	44		22			23			24			<p>3</p> <p>1        JAY JOHNSTONE 2        of lawful age, a witness herein, being first duly sworn 3        as hereinafter certified, was examined and deposed as 4        follows: 5                  CROSS-EXAMINATION 6        BY MR. THOMPSON: 7        Q. Good morning. We met briefly. My name is 8        Tod Thompson, and I, along with others of this firm, 9        represent the estate of Nathaniel Jones and other 10      Plaintiffs against the City of Cincinnati and other 11      Defendants in this lawsuit. 12      You're familiar with this action, right? 13      A. Yes. 14      Q. For the record, could you state and spell 15      your name, please? Full name. 16      A. My name is Jay Johnstone. J-A-Y, 17      J-O-H-N-S-T-O-N-E. 18      Q. Do you go by Jay? 19      A. I go by Jay. 20      Q. You can call me Tod. 21      Do you have a middle name, Jay? 22      A. Burtram, B-U-R-T-R-A-M. 23      Q. And Jay, have you ever had your deposition 24      taken before? Have you ever provided deposition</p>
8        JAY JOHNSTONE	PAGE																																													
9        CROSS-EXAMINATION BY MR. THOMPSON	4																																													
10      EXAMINATION BY STACKPOLE	-																																													
11      EXAMINATION BY MR. HARDIN	-																																													
12																																														
13																																														
14      E X H I B I T S																																														
15      JOHNSTONE EXHIBITS	MARKED	REFERENCED																																												
16      1	13																																													
17      2	53																																													
18      PREVIOUSLY-MARKED		REFERENCED																																												
19      Slade 2	10, 39																																													
20      Slade 3	36																																													
21      Slade 4	44																																													
22																																														
23																																														
24																																														

AMS DEPO

(513) 941-9464 amsdepo@fuse.net Cincinnati, Ohio

## 2 (Pages 5 to 8)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

	5		7
<p>1 testimony?</p> <p>2 A. Not on this case, no.</p> <p>3 Q. But you have in other cases?</p> <p>4 A. Yes.</p> <p>5 Q. Approximately how many, do you know?</p> <p>6 A. One.</p> <p>7 Q. Just one? What did that case involve?</p> <p>8 A. That case involved myself in uniform</p> <p>9 patrol and stopping a vehicle for, I believe, a Street</p> <p>10 Corner or Vice Unit, and it was a case of, I believe,</p> <p>11 Fourth Amendment illegal search.</p> <p>12 MR. STACKPOLE: Alleged illegal search.</p> <p>13 THE WITNESS: Alleged illegal search.</p> <p>14 Q. When was that case?</p> <p>15 A. I believe the deposition I gave was 2001.</p> <p>16 I believe the incident occurred in 1999.</p> <p>17 Q. And what was the result of that case?</p> <p>18 A. I do not know.</p> <p>19 Q. Do you remember who the plaintiff was in</p> <p>20 that action?</p> <p>21 A. I do not know.</p> <p>22 Q. You were a named defendant?</p> <p>23 A. Yes.</p> <p>24 Q. Was that arising out of your duties as a</p>		<p>1 involved -- you were the subject of a racial profiling</p> <p>2 investigation; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Could you tell me a little bit about that?</p> <p>5 A. I believe I was working third shift on</p> <p>6 bike patrol and myself and my partner, and I believe</p> <p>7 another unit, stopped a subject.</p> <p>8 Q. Who was your partner?</p> <p>9 A. Police Officer Jason Lamb.</p> <p>10 Q. Subject was African-American?</p> <p>11 A. Correct.</p> <p>12 Q. Why did you stop him?</p> <p>13 A. I don't recall what the incident was</p> <p>14 about.</p> <p>15 Q. During the course of that investigation,</p> <p>16 did you provide a statement, or were you interviewed?</p> <p>17 A. I believe I was interviewed.</p> <p>18 Q. Do you remember who the complainant was?</p> <p>19 A. I do not.</p> <p>20 Q. Do you recall what the result of that was,</p> <p>21 of the investigation?</p> <p>22 A. I believe it was unfounded.</p> <p>23 Q. I understand you were also subject of an</p> <p>24 investigation for poor demeanor, I guess. Do you</p>	
<p>1 Cincinnati Officer?</p> <p>2 A. Yes.</p> <p>3 Q. Was it in Federal Court?</p> <p>4 A. I don't recall.</p> <p>5 Q. Were you the only named defendant?</p> <p>6 A. No.</p> <p>7 Q. Who else was named?</p> <p>8 A. Police Officer Tammy Hussels, Police</p> <p>9 Officer Mike Hudepohl, and a Police Officer Mark Kelly.</p> <p>10 Q. Mark Kelly?</p> <p>11 A. Yes.</p> <p>12 Q. Was there an internal investigation</p> <p>13 relating to the events that underlined the case?</p> <p>14 A. Yes.</p> <p>15 Q. Was that internal investigation in 1999?</p> <p>16 A. I don't recall.</p> <p>17 Q. What was the result of that internal</p> <p>18 investigation?</p> <p>19 A. I don't recall.</p> <p>20 Q. You don't? Any other times where you</p> <p>21 provided deposition testimony?</p> <p>22 A. Not that I remember, no.</p> <p>23 Q. I understand that prior to November 30,</p> <p>24 2003 -- prior to July 19, 2004, rather, you were</p>	6	<p>1 recall that?</p> <p>2 A. No, I do not.</p> <p>3 Q. But you recall being the subject of more</p> <p>4 investigations than the racial profiling, right?</p> <p>5 A. Yes.</p> <p>6 Q. And the search?</p> <p>7 A. Yes.</p> <p>8 Q. And you were subject of an investigation</p> <p>9 regarding excessive force?</p> <p>10 A. I don't recall.</p> <p>11 Q. You don't recall that? Do you know how</p> <p>12 many times you've been investigated, pursuant to some</p> <p>13 citizen complaint of some sort?</p> <p>14 A. No.</p> <p>15 Q. More than what we've discussed so far?</p> <p>16 A. I don't remember.</p> <p>17 MR. THOMPSON: Pete, we don't have any of</p> <p>18 the files on Jay.</p> <p>19 MR. STACKPOLE: Okay. You don't have his</p> <p>20 personnel file?</p> <p>21 MR. THOMPSON: No. And I don't have</p> <p>22 anything but the -- I don't have any of the</p> <p>23 complaint investigations.</p> <p>24 Q. And you were subject of an investigation</p>	8

## 3 (Pages 9 to 12)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">9</p> <p>1 in the death of Nathaniel Jones as well?</p> <p>2 A. Yes.</p> <p>3 Q. And you understand that that is the matter</p> <p>4 that this current case is concerned with, right?</p> <p>5 A. Yes.</p> <p>6 Q. Well, today's deposition shouldn't be too</p> <p>7 different from the one that you were involved with</p> <p>8 before. There are a few rules that we want to adhere</p> <p>9 to, because the result of today's deposition is going</p> <p>10 to be a written transcript. That's what Barb is taking</p> <p>11 down into that machine right there. Everything we say,</p> <p>12 she's typing into the machine, and in the end, it will</p> <p>13 look like a script for a play.</p> <p>14 Because that's going to be the result of</p> <p>15 the deposition, there are a few things you and I want</p> <p>16 to do to make sure we get a clear record. First,</p> <p>17 verbalize everything we communicate. Barb can't get</p> <p>18 down non-verbal communications: Nods of the head;</p> <p>19 shakes of the head; any kind of gesture. They just</p> <p>20 don't get into the record. Okay?</p> <p>21 A. Yes.</p> <p>22 Q. Second, we want to try to avoid speaking</p> <p>23 over one another, as people do in regular conversation,</p> <p>24 because it's hard for Barb to get what two people are</p>	<p style="text-align: right;">11</p> <p>1 what was marked as Slade Exhibit 2. And you can go</p> <p>2 ahead and look at that portion under where it says,</p> <p>3 "Policy."</p> <p>4 Do you recognize Slade Exhibit 2?</p> <p>5 A. Yes.</p> <p>6 Q. What is your current position?</p> <p>7 A. I am a Sergeant in District 4.</p> <p>8 Q. District 4?</p> <p>9 A. Yes.</p> <p>10 Q. Where is that located?</p> <p>11 A. It's located in the neighborhoods of Bond</p> <p>12 Hill, Hartwell, Avondale, Walnut Hills. And it's at</p> <p>13 4150 Reading Road.</p> <p>14 Q. How long have you held that position?</p> <p>15 A. It's going to be 13 months.</p> <p>16 Q. 13 months?</p> <p>17 A. No, I'm sorry. 25 months.</p> <p>18 Q. 25 months. That's when you were promoted</p> <p>19 to Sergeant?</p> <p>20 A. Yes.</p> <p>21 Q. When did you start with the Cincinnati</p> <p>22 Police Department?</p> <p>23 A. January, 1998.</p> <p>24 Q. And your first position was?</p>
<p style="text-align: right;">10</p> <p>1 saying at the same time into the record. Okay?</p> <p>2 A. Yes.</p> <p>3 Q. And third, this is your sworn testimony</p> <p>4 that we're taking today. And to that end, you want to</p> <p>5 make sure that you understand my questions. And if</p> <p>6 there's something that I can do to rephrase or</p> <p>7 reiterate a question so that you understand it, if you</p> <p>8 misunderstand a question, just let me know, and we'll</p> <p>9 attempt, as best as we can, to get you a question that</p> <p>10 you can answer.</p> <p>11 If you do answer a question, we have to</p> <p>12 assume that you understood it. Okay?</p> <p>13 A. Yes.</p> <p>14 Q. Other than that, if you need a break for</p> <p>15 any reason whatsoever, just let Pete or Don here know,</p> <p>16 or me, and we'll accommodate your request. The only</p> <p>17 rule there is, if there's a question pending, we'll get</p> <p>18 your response to that question before we take a break.</p> <p>19 Okay?</p> <p>20 A. Yes.</p> <p>21 (Reference to previously-marked Slade</p> <p>22 Deposition Exhibit No. 2.)</p> <p>23 Q. All right. We've marked some exhibits --</p> <p>24 previously marked some exhibits. I'd like to show you</p>	<p style="text-align: right;">12</p> <p>1 A. Police officer.</p> <p>2 Q. And is that the title you held until you</p> <p>3 were promoted to Sergeant?</p> <p>4 A. I was promoted to Police Specialist in</p> <p>5 between.</p> <p>6 Q. And when were you a Specialist?</p> <p>7 A. I believe I was in July of 2006 --</p> <p>8 promoted in July of 2006.</p> <p>9 Q. November 30, 2003, then, you were a police</p> <p>10 officer?</p> <p>11 A. Yes.</p> <p>12 Q. What district were you assigned?</p> <p>13 A. District 5.</p> <p>14 Q. When did you move -- well, was that the</p> <p>15 first district you were assigned to?</p> <p>16 A. Yes.</p> <p>17 Q. And other than District 4 and District 5,</p> <p>18 any other districts you were assigned to?</p> <p>19 A. I was assigned to Recruiting.</p> <p>20 Q. And when were you assigned to Recruiting?</p> <p>21 A. I believe it was January, 2006.</p> <p>22 Q. And how long were you assigned to</p> <p>23 Recruiting?</p> <p>24 A. Until July, 2007.</p>

**4 (Pages 13 to 16)**

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

13	15
<p>1 Q. Did you request that assignment?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you request it?</p> <p>4 A. I was interested in working in that unit.</p> <p>5 Q. And why did you leave that unit?</p> <p>6 A. Because of the promotion to Sergeant.</p> <p>7 (Johnstone Deposition Exhibit No. 1 was marked for identification.)</p> <p>8 Q. You have been handed what's been marked</p> <p>9 Johnstone Exhibit 1. And with reference to Slade</p> <p>10 Exhibit 2 the Mental Health Policy there, you are not</p> <p>11 an MHRT certified officer; is that true?</p> <p>12 A. No, that's incorrect.</p> <p>13 Q. You are MHRT certified?</p> <p>14 A. Yes.</p> <p>15 Q. When did you achieve certification?</p> <p>16 A. I'm not sure. I believe it might have</p> <p>17 been 2004.</p> <p>18 Q. Was it after the death of Nathaniel Jones?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And Johnstone Exhibit 1 purports to</p> <p>21 be a record of the training that you've completed</p> <p>22 through the police department. Is that consistent with</p> <p>23 your read?</p>	<p>1 mental health departments and mental health agencies.</p> <p>2 Q. And what do they speak about?</p> <p>3 A. Mental health response, mental health</p> <p>4 consumers.</p> <p>5 Q. What is the purpose of the training that</p> <p>6 you received, the MHRT certification training?</p> <p>7 A. What is the purpose?</p> <p>8 Q. Yes.</p> <p>9 A. The purpose would be to give the officers</p> <p>10 a better understanding on how to deal with mental</p> <p>11 health consumers.</p> <p>12 Q. And the better understanding with regard</p> <p>13 to what? I mean, what kind of qualifications did you</p> <p>14 obtain through the course of that certification, let's</p> <p>15 say, that a regular beat officer wouldn't have? What</p> <p>16 kind of knowledge did they give you?</p> <p>17 A. They just gave us a better understanding</p> <p>18 of what -- to understand why and how mental health</p> <p>19 consumers behave the way they do, and how they may tend</p> <p>20 to react to police officers and first responders.</p> <p>21 Q. Folks who are suspected mentally ill --</p> <p>22 strike that.</p> <p>23 First of all, certification doesn't</p> <p>24 qualify you to diagnose mental illness, right?</p>
14	16
<p>1 A. Yes.</p> <p>2 Q. And looking at Page 3, does it comport</p> <p>3 with your recollection that you received Mental Health</p> <p>4 Response Team certification training September 12,</p> <p>5 2005?</p> <p>6 A. Yes.</p> <p>7 Q. At least the 12th through the 16th, right?</p> <p>8 A. Yes.</p> <p>9 Q. 40 hours of training?</p> <p>10 A. Yes.</p> <p>11 Q. Have you received any other training in</p> <p>12 mental health response?</p> <p>13 A. Not that I recall.</p> <p>14 Q. I presume that a component of that</p> <p>15 training was some training in the MHRT policy?</p> <p>16 A. The training from the mental health, is</p> <p>17 that what you're saying?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. What other training did you receive to</p> <p>21 obtain certification in MHRT?</p> <p>22 A. The 40 hours that you previously stated.</p> <p>23 Q. What does that include?</p> <p>24 A. It includes several speakers who represent</p>	<p>1 A. Correct.</p> <p>2 Q. Okay. The certification qualifies you to</p> <p>3 respond to individuals with suspected mental health</p> <p>4 issues, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that certification provided you</p> <p>7 with tools for response to folks who may have mental</p> <p>8 health issues, right?</p> <p>9 A. It provided us with knowledge.</p> <p>10 Q. Knowledge. Okay. Knowledge about ways to</p> <p>11 communicate with folks who might be mentally ill?</p> <p>12 A. Yes.</p> <p>13 Q. I think you said knowledge about how</p> <p>14 mentally ill individuals may tend to react to first</p> <p>15 responders, right?</p> <p>16 A. Yes.</p> <p>17 Q. How to manage those reactions?</p> <p>18 A. Yes.</p> <p>19 Q. You received some training on how to</p> <p>20 handle folks who are suspected mentally ill in a manner</p> <p>21 that hopefully will or would minimize the possibility</p> <p>22 of escalation?</p> <p>23 A. Yes.</p> <p>24 Q. And specific training in ways to</p>

## 5 (Pages 17 to 20)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

17	19
<p>1 de-escalate folks who maybe suffer mental illness?</p> <p>2 A. I don't recall any specific training, no.</p> <p>3 Q. And prior to receiving that certification,</p> <p>4 you'd received no training in the handling or response</p> <p>5 to folks who are suspected mentally ill?</p> <p>6 A. That's incorrect.</p> <p>7 Q. That is?</p> <p>8 A. Yes.</p> <p>9 Q. What training have you received?</p> <p>10 A. In the Police Academy, there had been some</p> <p>11 training.</p> <p>12 Q. And your certification indicates, though,</p> <p>13 that you've had much more extensive training. You</p> <p>14 passed a course in MHRT, right?</p> <p>15 A. From the 2005 training, yes.</p> <p>16 Q. And your certification means that you are</p> <p>17 more qualified to respond to folks who are suspected</p> <p>18 mentally ill than someone who's not had the</p> <p>19 certification training or who has not been certified,</p> <p>20 right?</p> <p>21 A. I would not agree with that.</p> <p>22 Q. Why not?</p> <p>23 A. I have had possibly more training than</p> <p>24 those who have not received the training. But I would</p>	<p>1 Q. Maybe it's just a matter of deductive</p> <p>2 necessity, but it seems to me --</p> <p>3 A. The concept, yes, is that I should be more</p> <p>4 qualified.</p> <p>5 Q. But you are not in reality?</p> <p>6 A. I have received the training and</p> <p>7 therefore, I should be more qualified, yes.</p> <p>8 Q. Okay. Looking at Slade Exhibit 2 -- now,</p> <p>9 again, this is the policy that was in place in -- well,</p> <p>10 revised, you'll see down there, "Revised July 1, 2002."</p> <p>11 You would have been, to some extent, trained on this</p> <p>12 policy, 12.11, right?</p> <p>13 A. Yes.</p> <p>14 Q. And you would have read it?</p> <p>15 A. Yes.</p> <p>16 Q. Would you have been, like, quizzed or</p> <p>17 tested on it, let's say, as of November 30, 2003?</p> <p>18 A. No.</p> <p>19 Q. You would have received some training with</p> <p>20 regard to the existence and import of the policy,</p> <p>21 right?</p> <p>22 A. I'm not quite sure I understand what</p> <p>23 you're asking.</p> <p>24 Q. Okay. You received training, at least to</p>
18	20
<p>1 not state that I am more qualified.</p> <p>2 Q. Well, Slade Exhibit 2 is an older version</p> <p>3 of the policy on handling suspected mentally ill</p> <p>4 individuals and potential suicides. There have been</p> <p>5 subsequent revisions, I'm sure, and you're familiar</p> <p>6 with those, right?</p> <p>7 A. Yes.</p> <p>8 Q. Nonetheless, the idea is that the police</p> <p>9 department certifies -- trains and certifies officers</p> <p>10 in MHRT, precisely so that those officers can take on</p> <p>11 the role of primary responding officer, in cases where</p> <p>12 there is suspected mentally ill individuals, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is it your understanding that</p> <p>15 the purpose of that, the purpose of that policy where</p> <p>16 folks who are MHRT certified are going to be the first</p> <p>17 responders in such cases is to have the most qualified</p> <p>18 officers responding to people who are suspected</p> <p>19 mentally ill?</p> <p>20 A. Yes.</p> <p>21 Q. You're certified, right?</p> <p>22 A. Yes.</p> <p>23 Q. That would make you more qualified, right?</p> <p>24 MR. HARDIN: Objection. You can answer.</p>	<p>1 the extent that you learned that the policy exists?</p> <p>2 MR. HARDIN: There's going to be an</p> <p>3 objection to questions regarding the policy.</p> <p>4 He's identified this as the mental health</p> <p>5 procedure. But go ahead.</p> <p>6 Q. And did you receive any training with</p> <p>7 regard to the import or purpose of the policy?</p> <p>8 MR. HARDIN: Objection.</p> <p>9 A. Not that I recall.</p> <p>10 Q. Okay. Just to be clear, I'm talking about</p> <p>11 the words there under "Policy."</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What does "policy" mean to you?</p> <p>14 A. "Policy" is what the department has set in</p> <p>15 place and how they want specific situations handled.</p> <p>16 Q. And this is somehow different than</p> <p>17 procedures?</p> <p>18 A. Procedures are a guideline set aside to</p> <p>19 maintain policy.</p> <p>20 Q. Police officers are expected to know</p> <p>21 policy?</p> <p>22 A. Yes.</p> <p>23 Q. They are expected to follow policy?</p> <p>24 A. Yes.</p>

## 6 (Pages 21 to 24)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p>1 Q. Policies are in place to ensure the safety 2 of the public and police officers, right? 3 A. Yes. 4 Q. Police officers are required to follow 5 procedure? 6 A. Yes. 7 Q. And to know it? To know procedures? 8 A. They should be very familiar with them, 9 yes. 10 Q. And as you read Slade Exhibit 2, under 11 there, where you -- the five paragraphs under that 12 heading, "Policy." 13 A. Yes. 14 Q. Does that, in your mind, express a policy 15 or procedure? 16 A. That is a policy statement. 17 Q. Okay. And then if you go to Page 2. 18 There's a heading that says "Procedure." 19 A. Yes. 20 Q. And there's language under that. And in 21 your mind, does that language express procedure? 22 A. Yes. 23 Q. Have you had an opportunity to look at the 24 language under the heading "Policy" on Page 1 of Slade</p>	<p>21</p> <p>1 Q. Well, let's say that a beat officer is 2 called out to a non-emergency situation, and identifies 3 the subject of the call as potentially mentally ill. 4 Calls that into dispatch. In that non-emergency 5 situation, what does the policy require? 6 MR. STACKPOLE: Objection. You can 7 answer. 8 A. I need for you to explain to me the 9 emergency versus non-emergency. I don't understand. 10 Q. Well, I guess I'm going to have to ask you 11 to educate me on that, because that's the language in 12 the policy. It says, "If the run is an emergency," 13 you'll see, and then there's another situation where it 14 says, "If the run is not an emergency." So you're 15 probably much more qualified to tell me what that means 16 than I am. 17 A. Okay. And what was your question? 18 Q. Non-emergency situation, what does that 19 mean to you, first of all? Let's start there. 20 A. Non-emergency? 21 Q. Yeah. 22 A. That would be a non life-threatening 23 situation. 24 Q. Non life-threatening. Would you add</p>
<p>22</p> <p>1 Exhibit 2? 2 A. Yes. 3 Q. Would you agree that this policy 4 establishes protocol for MHRT -- well, for response to 5 folks who are deemed MHRT -- I understand the language 6 is, "you are suspected mentally ill." 7 Let me ask that more simply. Is it your 8 understanding that this policy sets out the protocol 9 for -- general protocol for response to folks who are 10 suspected mentally ill? 11 A. Yes. 12 Q. And that this policy expresses different 13 responses, provided different circumstances, right? 14 A. I'm not sure what you're asking. 15 Q. Well, for example, there are circumstances 16 where an MHRT officer is available -- is not available, 17 where there's an emergency, where there's not an 18 emergency, and so on, right? 19 A. Yes. 20 Q. And pursuant to this policy, what is your 21 understanding with regard to MHRT response requirements 22 in a non-emergency situation with a suspected mentally 23 ill individual? 24 A. I'm not sure what you're asking.</p>	<p>22</p> <p>1 property to that? Non property threatening? 2 A. No, I would not. 3 Q. You would not? 4 A. No. 5 Q. Okay. And threatening to the life of self 6 or others would be an emergency? 7 A. Yes. 8 Q. But an individual who's a threat to 9 property is not an emergency? 10 A. That would depend on the situation. 11 Q. Depend on the situation. And what 12 situation would that -- what kind of situation would be 13 an emergency? 14 A. I can't say specifically which situations. 15 It would all depend on variables in a specific 16 situation. 17 Q. Okay. Other than possibly a threat to 18 property, depending on the situation, and threat to 19 self, life -- threat to self or others, right? Any 20 other situations that you can think of that would 21 constitute "emergency?" 22 A. No. 23 Q. Okay. So with that understanding of the 24 term emergency and non-emergency. In a non-emergency</p>

## 7 (Pages 25 to 28)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">25</p> <p>1 situation, where you have an officer's been called out, 2 and the subject of the call is deemed by that officer 3 to be suspected mentally ill. Non-emergency. The 4 individual is not a threat to self, others, or 5 property. What does the policy require?</p> <p>6 MR. STACKPOLE: Objection. You can 7 answer.</p> <p>8 A. The policy states if an MHRT officer is 9 available, they will be dispatched.</p> <p>10 Q. And for what purpose?</p> <p>11 A. The purpose is for them to become the 12 first responder.</p> <p>13 Q. And "first responder" means the first 14 intervention with the subject, right?</p> <p>15 A. Yes.</p> <p>16 Q. Right. And the purpose of having the MHRT 17 certified officer be the person who intervenes first 18 with the suspected mentally ill subject is for all 19 those reasons that we've already discussed. You've 20 received training on how to communicate with these 21 people. Avoid escalation of circumstances -- or avoid 22 escalation of the situation, and so on. All this stuff 23 that we have already discussed, right?</p> <p>24 A. I'm not sure what you just asked there.</p>	<p style="text-align: right;">27</p> <p>1 Q. Does the policy -- Slade Exhibit 2, I 2 mean, does it lay out any other situations? Any other 3 conditions, that you can see, with regard to that?</p> <p>4 A. I'm not sure what you're asking me.</p> <p>5 Q. You have emergency situations and 6 non-emergency situations, right?</p> <p>7 A. Yes.</p> <p>8 Q. What other situations are there?</p> <p>9 A. There could be a situation where the beat 10 officer, as you described, a non-MHRT officer responds 11 to a non-emergency situation and then it escalates 12 rather quickly.</p> <p>13 Q. Right. So that's where it turns into an 14 emergency?</p> <p>15 A. Yes.</p> <p>16 Q. Ignoring that. All right? So take that 17 out of this example. There's neither an emergency nor 18 a situation that has turned into an emergency.</p> <p>19 Officers recognize MHRT. Called in MHRT. That officer 20 should wait for the MHRT officer to respond, right?</p> <p>21 MR. STACKPOLE: Objection.</p> <p>22 MR. HARDIN: Objection.</p> <p>23 Q. Right?</p> <p>24 A. No.</p>
<p style="text-align: right;">26</p> <p>1 Q. The purpose -- the whole idea behind 2 having an MHRT certified officer being that first 3 responder is all of the training that we discussed that 4 you've had, right? Because MHRT certified officers are 5 trained to avoid escalation where there's a suspected 6 mentally ill individual. They are trained to have an 7 awareness of the ways MHRT folk might react to them. 8 They are trained to communicate. And so on, right?</p> <p>9 MR. STACKPOLE: Objection. You may 10 answer.</p> <p>11 Q. Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And because the policy, as we discussed in 14 this situation, would require that the MHRT officer 15 take the role as the first responder, the beat officer, 16 who's not MHRT certified, in a non-emergency situation, 17 should allow the MHRT certified officer to take the 18 role as primary responder, right?</p> <p>19 MR. HARDIN: Objection.</p> <p>20 A. It depends on the situation. If they --</p> <p>21 Q. Non-emergency.</p> <p>22 A. Non-emergency?</p> <p>23 Q. Yeah.</p> <p>24 A. It would depend on the situation.</p>	<p style="text-align: right;">28</p> <p>1 Q. That officer should take on the role of 2 primary responder?</p> <p>3 A. If that officer has first contact.</p> <p>4 Q. Officer hasn't had any contact whatsoever.</p> <p>5 MR. HARDIN: Objection to the form of the 6 question. Go ahead.</p> <p>7 A. I'm not sure what you asked.</p> <p>8 Q. All right. Beat officer is called out and 9 the subject of the call, the beat officer recognizes or 10 identifies as MHRT. Before he interacts with that 11 person at all, identifies this is an MHRT. It's a 12 non-emergency situation. No threat to property. No 13 threat to the life of self or others. Beat officer 14 calls in an MHRT. Shouldn't the beat officer wait for 15 an MHRT certified officer to arrive on the scene?</p> <p>16 A. No.</p> <p>17 MR. HARDIN: Objection.</p> <p>18 MR. STACKPOLE: Objection.</p> <p>19 Q. No? So the beat officer should take the 20 role as first responder?</p> <p>21 A. They can.</p> <p>22 Q. But the policy says that the MHRT 23 certified officer is to be the primary responder, 24 right?</p>

## 8 (Pages 29 to 32)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">29</p> <p>1 A. The policy states that will be the first 2 responder when available. 3 Q. When available. So, I mean, what do I 4 have wrong? 5 MR. HARDIN: Objection to the form of the 6 question. 7 A. I'm not sure what you're asking me. 8 Q. You said, no, the beat officer -- you said 9 the beat officer should take the role as the primary 10 responder -- 11 MR. STACKPOLE: Objection. 12 Q. -- I think, right? 13 A. All right. 14 Q. Very simple. Where you have a 15 non-emergency situation with a subject who's been 16 identified as MHRT -- called an MHRT. Who should be 17 the first responder? 18 MR. HARDIN: Objection to the form of the 19 question. You may answer. 20 MR. STACKPOLE: Objection. 21 A. An MHRT officer, if they are available. 22 Q. Okay. All right. And in order for that 23 to occur, the beat officer should wait to allow that 24 MHRT certified officer to be the first responder,</p>	<p style="text-align: right;">31</p> <p>1 primary car? 2 MR. HARDIN: Objection 3 MR. STACKPOLE: Objection. 4 A. I'm not sure what you just asked. 5 Q. I'm trying to understand where the policy 6 allows the beat officer, a non-MHRT beat officer in a 7 non-emergency situation, that has been deemed MHRT, to 8 take on the role as the primary officer? 9 MR. HARDIN: Objection to the form of the 10 question. You may answer. 11 MR. STACKPOLE: Objection. 12 A. The policy does not disallow it if that 13 officer arrives there first. 14 Q. So where it says, "Mental Health Response 15 Team officers will be the first responders, when 16 available, on all runs involving suspected mentally ill 17 individuals." If that doesn't preclude non-MHRT 18 officers from being first responders, what does that 19 language do? 20 MR. STACKPOLE: Objection. 21 A. That language describes when the MHRT 22 officer arrives, they then become the primary officer. 23 Q. But the beat officer has no obligation to 24 wait for the MHRT officer to arrive in a non-emergency</p>
<p style="text-align: right;">30</p> <p>1 right? 2 MR. HARDIN: Objection. 3 A. No. 4 Q. No. Why not? 5 A. Because this officer has received some 6 training in the Academy and with their experience, they 7 can speak with the MHRT person. 8 Q. Is that what the policy says? 9 A. The policy doesn't stop that from 10 happening. 11 Q. So where it says "MHRT officer on the 12 scene will be the primary officer handling the 13 situation," that also allows, say, a non-certified 14 police officer to be the primary officer handling the 15 situation? 16 MR. STACKPOLE: Objection. 17 A. If the non-MHRT officer responds first on 18 the scene, they can provide first contact with an 19 individual. 20 Q. Where it says, "If the run is not an 21 emergency and no MHRT officer is available, the nearest 22 available MHRT officer from an adjoining district will 23 be dispatched as the primary car." That would also 24 allow a non-MHRT officer to be dispatched as the</p>	<p style="text-align: right;">32</p> <p>1 situation? 2 A. Yes. 3 Q. He does or does not? 4 A. He does not. 5 Q. And are you referring to a subsequent 6 revision of this policy, or the very policy that's in 7 Slade Exhibit 2? 8 A. The policy that's in front of me. 9 Q. And is that consistent with the training 10 that you've received as well, as an MHRT certified 11 officer? 12 A. I don't recall. 13 Q. You don't recall? 14 A. No. 15 MR. HARDIN: There's going to be an 16 objection, only because he said he was trained in 17 2005, I believe, and this incident occurred in 18 2003. 19 Q. Are you familiar with the term "positional 20 asphyxia?" 21 A. Yes. 22 Q. Were you familiar with it in November, 23 2003? 24 A. Yes.</p>

**9 (Pages 33 to 36)**

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

33	35
<p>1 Q. You were familiar with it when Mr. Jones 2 died?</p> <p>3 A. Yes.</p> <p>4 Q. What did you know about positional 5 asphyxia back then?</p> <p>6 A. I don't recall specifically.</p> <p>7 Q. When did you receive training in 8 positional asphyxia?</p> <p>9 A. If I recall correctly, we received formal 10 training after the incident.</p> <p>11 Q. Not before?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Can you tell me -- have you received -- I 14 mean, what kind of training did you receive after?</p> <p>15 MR. HARDIN: Objection. You may answer.</p> <p>16 A. I believe it was in-service training.</p> <p>17 Q. In-service?</p> <p>18 A. Yes.</p> <p>19 Q. Is that your yearly?</p> <p>20 A. Yes.</p> <p>21 Q. And do you recall if that training was in 22 2003 -- like, if you were to look at Johnstone Exhibit 23 1, can you identify which training would have included 24 the positional asphyxia training?</p>	<p>1 A. It can cause them to pass out.</p> <p>2 Q. Anything else?</p> <p>3 A. It can cause death.</p> <p>4 Q. Did you know that back in 2003?</p> <p>5 A. Not that I recall.</p> <p>6 Q. What about steps to take to avoid 7 positional asphyxia? Are you familiar with those?</p> <p>8 MR. HARDIN: There will be an objection, 9 if it has anything to do with training after the 10 2003 incident. Go ahead.</p> <p>11 A. In general, yes.</p> <p>12 Q. What are those steps?</p> <p>13 A. If somebody is on their stomach, to get 14 them off of their stomach.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. If you don't recall what training, how 18 often you received training in positional asphyxia, are 19 you really able to testify that you received that 20 training after November 30 of 2003?</p> <p>21 A. I do recall receiving some training 22 afterwards, yes.</p> <p>23 Q. You do not recall receiving training 24 before?</p>
34	36
<p>1 A. No, it does not state it, so I don't 2 recall.</p> <p>3 Q. Do you recall receiving a Training 4 Bulletin on positional asphyxia?</p> <p>5 A. No.</p> <p>6 Q. Do you think that you were trained more 7 than once with regard to positional asphyxia?</p> <p>8 A. I don't remember how many times we were 9 trained.</p> <p>10 Q. Might have been once? Might have been 11 more?</p> <p>12 A. I don't remember.</p> <p>13 Q. Are you familiar with factors -- warning 14 signs for positional asphyxia? Risk signs of factors?</p> <p>15 A. Not specifically, no.</p> <p>16 Q. Generally?</p> <p>17 A. Not that I recall.</p> <p>18 Q. So as you sit here today, you do not know 19 what the risk factors are for positional asphyxia?</p> <p>20 A. I do know some risk factors, yes.</p> <p>21 Q. What do you know?</p> <p>22 A. That it can cause someone to stop 23 breathing.</p> <p>24 Q. Anything else?</p>	<p>1 A. I do not.</p> <p>2 Q. In any form?</p> <p>3 A. I don't recall receiving any training.</p> <p>4 Q. You've received training -- you've 5 received training on the department's Use of Force 6 Policy; is that right?</p> <p>7 A. Yes.</p> <p>8 MR. HARDIN: Objection to the word 9 "policy." Go ahead.</p> <p>10 Q. Is that a word -- I think you just told me 11 the difference between policy and procedure. Do you 12 remember that?</p> <p>13 A. Yes.</p> <p>14 Q. Is policy a word that you have trouble 15 with?</p> <p>16 A. No.</p> <p>17 (Reference to previously-marked Slade 18 Deposition Exhibit No. 3.)</p> <p>19 Q. Okay. Neither do I. 20 You've been handed Slade Exhibit 3?</p> <p>21 A. Yes.</p> <p>22 Q. And do you recognize this as the Use of 23 Force policy that was in place, revised July 29, '03?</p> <p>24 MR. HARDIN: Objection to the use of the</p>

**10 (Pages 37 to 40)**

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">37</p> <p>1 word "policy."</p> <p>2 MR. THOMPSON: Do you just want to make a 3 standing objection to every time I say "policy?"</p> <p>4 MR. HARDIN: No.</p> <p>5 MR. THOMPSON: You don't?</p> <p>6 MR. HARDIN: No.</p> <p>7 MR. THOMPSON: It would be easier.</p> <p>8 MR. HARDIN: Probably.</p> <p>9 MR. THOMPSON: Don doesn't like the word 10 "policy."</p> <p>11 MR. HARDIN: Well, it's not a policy.</p> <p>12 MR. THOMPSON: Well, we'll put you up on 13 the stand and you can testify to that, when the 14 time comes.</p> <p>15 MR. HARDIN: I don't think so.</p> <p>16 I represent the client and if you continue 17 to use the word "policy," I'll object to it.</p> <p>18 MR. THOMPSON: Could you enlighten me, 19 like, with regard to what grounds? I mean, I 20 know you're objecting, but I'm trying to 21 understand -- under the Rules of Evidence, I'm 22 trying to figure out what could possibly be the 23 grounds for objecting to my use of the term 24 "policy?"</p>	<p style="text-align: right;">39</p> <p>1 A. Yes.</p> <p>2 Q. Is it consistent with your read, that that 3 language expresses the department's Use of Force 4 policy?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 MR. HARDIN: There was no objection to 8 that.</p> <p>9 (Reference to previously-marked Slade 10 Deposition Exhibit No. 2.)</p> <p>11 Q. And I'd like to ask you, with your 12 understanding of the -- if I call Slade Exhibit 2 the 13 MHRT policy, that language that we looked at on Exhibit 14 2. With your understanding of Slade Exhibit 2, I'd 15 like to ask you some questions about the Use of Force 16 policy, okay?</p> <p>17 The third paragraph on Page 6 -- are you 18 there?</p> <p>19 A. Yes.</p> <p>20 Q. Starts with "courtesy." If you could just 21 go ahead and read that -- not out loud, just read that 22 paragraph to yourself.</p> <p>23 A. (Witness reviewing document).</p> <p>24 Q. And this generally talks about courtesy,</p>
<p style="text-align: right;">38</p> <p>1 MR. HARDIN: Because it's Procedure 12.455 2 or Procedure, so on. It has a policy statement 3 in it.</p> <p>4 MR. THOMPSON: Don, clearly, you know --</p> <p>5 MR. HARDIN: It's not a policy</p> <p>6 MR. THOMPSON: -- you're establishing 7 this, or you're attempting to establish this like 8 a factual dispute. I don't think that factual 9 disputes -- because there is a dispute of fact, I 10 don't think that thereby renders a question, you 11 know, objectionable. I'm not familiar with any 12 rule that says that a dispute of fact is 13 objectionable. But I could be wrong. Maybe I'll 14 have to go through them again.</p> <p>15 Q. If you turn to Slade Exhibit 3, Page 6, 16 please.</p> <p>17 A. Okay.</p> <p>18 Q. And do you see that first word at the top 19 of the page?</p> <p>20 A. Yes.</p> <p>21 Q. What is that word?</p> <p>22 A. "Policy."</p> <p>23 Q. And do you see the language under that 24 word, continuing to Page 7?</p>	<p style="text-align: right;">40</p> <p>1 and then it talks about the best result, the most 2 desirable result in effectuating an arrest, right?</p> <p>3 A. Yes.</p> <p>4 Q. And that most desirable result is 5 compliance with simple directions, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And isn't the MHRT certified 8 officer's role important because one of the issues with 9 folks who suffer mental illness is that they may be 10 impaired with regard to complying with simple 11 directions?</p> <p>12 A. What is your question?</p> <p>13 Q. My question is, the MHRT certified officer 14 sometimes plays an important role. The knowledge and 15 training that you received is significant with regard 16 to assisting mentally ill individuals to comply with 17 simple directions; is that right?</p> <p>18 A. They can be an asset, yes.</p> <p>19 Q. Right. That's because the mentally ill 20 population, sometimes because of their illness or 21 suspected illness, will demonstrate an inability to 22 comply with simple directions?</p> <p>23 A. Yes.</p> <p>24 Q. They are sometimes impaired in that</p>

## 11 (Pages 41 to 44)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p>41</p> <p>1 regard, right?</p> <p>2 A. I do not know.</p> <p>3 Q. Impaired. Sometimes -- it's tough for</p> <p>4 them sometimes to follow simple directions, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And the MHRT certified officer has</p> <p>7 received training in how to help them, or how to</p> <p>8 communicate with suspected mentally ill individuals, in</p> <p>9 order to effectuate compliance with simple directions,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. That's kind of why you don't want,</p> <p>13 you know -- if possible, you don't want a non-MHRT</p> <p>14 certified officer taking on the role of first responder</p> <p>15 with a suspected mentally ill individual, right?</p> <p>16 A. That's incorrect.</p> <p>17 Q. That's incorrect?</p> <p>18 A. Yes.</p> <p>19 Q. If you look at the next paragraph -- and</p> <p>20 take whatever time you need to read that.</p> <p>21 A. (Witness reviewing document).</p> <p>22 Q. And this paragraph has to do with when</p> <p>23 control is necessary to effectuate an arrest -- or to</p> <p>24 effect an arrest, right?</p>	<p>43</p> <p>1 advice, to heed warnings, to be persuaded, that renders</p> <p>2 effecting an arrest without force sometimes more</p> <p>3 difficult, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And sometimes, it takes more skill</p> <p>6 in those cases with a mentally ill individual to avoid</p> <p>7 force in effecting an arrest, right?</p> <p>8 A. I wouldn't agree with that.</p> <p>9 Q. You would not?</p> <p>10 A. No.</p> <p>11 Q. Well, when I use the term -- is it the</p> <p>12 term "skill"?</p> <p>13 A. Yes.</p> <p>14 Q. I'm using that term to refer to the</p> <p>15 special training that you received as an MHRT certified</p> <p>16 officer. And I guess my question is, would you agree</p> <p>17 that those skills, or that training, that knowledge</p> <p>18 that you've received during the course of training, is</p> <p>19 useful in dealing with MHRT folk, mentally ill folk,</p> <p>20 and avoiding the use of force in such dealings?</p> <p>21 A. Useful, yes.</p> <p>22 Q. Okay. And sometimes necessary to avoid</p> <p>23 force, right?</p> <p>24 A. I wouldn't agree with that, no.</p>
<p>42</p> <p>1 A. Yes.</p> <p>2 Q. And kind of the first step for taking</p> <p>3 control, or steps to take control, says, "advice,</p> <p>4 warnings and persuasion," right?</p> <p>5 A. Yes.</p> <p>6 Q. Now, just kind of along the same lines,</p> <p>7 mentally ill individuals are sometimes -- it's</p> <p>8 sometimes difficult for them to take advice, heed</p> <p>9 warnings, or be persuaded, right?</p> <p>10 A. Yes.</p> <p>11 Q. And MHRT certified officers are trained</p> <p>12 with regard to advising, warning, and attempting to</p> <p>13 persuade mentally ill individuals, right?</p> <p>14 A. Yes.</p> <p>15 Q. And because mentally ill individuals</p> <p>16 sometimes have difficulty following simple directions,</p> <p>17 heeding advice, warnings, or being persuaded, it can be</p> <p>18 more difficult to get that individual to submit</p> <p>19 without, say, the use of force, right?</p> <p>20 A. I'm not sure what you're asking.</p> <p>21 Q. Because of the difficulty -- because of</p> <p>22 the mentally ill individual's impaired understanding,</p> <p>23 impaired cognition, their inability to follow simple</p> <p>24 directions in some instances. Their inability to take</p>	<p>44</p> <p>1 Q. Really? And if you look at -- and the</p> <p>2 next paragraph is about de-escalation and escalation,</p> <p>3 with regard to the amount of force being used. I think</p> <p>4 you have already testified to this, to some extent, but</p> <p>5 MHRT certified officers are trained to -- you get</p> <p>6 knowledge and training that allows you to -- or</p> <p>7 hopefully allows you to avoid escalation caused by an</p> <p>8 individual's mental illness, right?</p> <p>9 A. Yes.</p> <p>10 (Reference to previously-marked Slade Deposition Exhibit No. 4.)</p> <p>11 Q. Okay. I would like to hand you Slade</p> <p>12 Exhibit 4. Do you recognize this document?</p> <p>13 A. I recognize that it's Staff Notes, yes.</p> <p>14 Q. And if you turn, then, to February 25 of</p> <p>15 2003. Do you see that on the first page?</p> <p>16 A. Yes.</p> <p>17 Q. If you turn -- and I'll represent to you</p> <p>18 that these are excerpts from Staff Notes, okay? If you</p> <p>19 turn to the last two pages of that exhibit. Have you</p> <p>20 ever received or seen that Training Bulletin?</p> <p>21 A. I have seen it.</p> <p>22 Q. You have? Have you ever read it?</p> <p>23 A. Yes.</p>

## 12 (Pages 45 to 48)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">45</p> <p>1 Q. Would that have been February 25, 2003?</p> <p>2 A. I don't recall reading it then, no.</p> <p>3 Q. You recall signing that you read it?</p> <p>4 A. No, I do not.</p> <p>5 Q. Is this exhibit consistent with, like,</p> <p>6 bulletins that you might receive -- a Training Bulletin</p> <p>7 you might have received during roll call?</p> <p>8 A. No.</p> <p>9 Q. So you do not recall receiving this</p> <p>10 Training Bulletin during roll call?</p> <p>11 A. No.</p> <p>12 Q. Could you tell me -- some training occurs,</p> <p>13 though, in roll call, right?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me how that occurs?</p> <p>16 A. There are six-minute training scenarios</p> <p>17 that are provided by the Police Academy and the</p> <p>18 Sergeant reads the training.</p> <p>19 Q. And then -- I mean, are you quizzed on it?</p> <p>20 A. No.</p> <p>21 Q. And then you sign something?</p> <p>22 A. No.</p> <p>23 Q. Are you familiar with -- are you familiar,</p> <p>24 generally, with Training Bulletins? Like, the concept</p>	<p style="text-align: right;">47</p> <p>1 A. Yes.</p> <p>2 Q. You would have been given the opportunity</p> <p>3 to see them?</p> <p>4 A. Yes.</p> <p>5 Q. You would not be expected to read them,</p> <p>6 though?</p> <p>7 MR. HARDIN: Objection. Asked and</p> <p>8 answered.</p> <p>9 Q. Is that right?</p> <p>10 A. I'm not sure what the expectation is.</p> <p>11 Q. Okay. So you would have been given the</p> <p>12 opportunity to see these before November of 2003?</p> <p>13 A. No.</p> <p>14 Q. You would not have?</p> <p>15 A. These specific Staff Notes?</p> <p>16 Q. Yeah.</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. Because they are printed on -- they would</p> <p>20 have been printed on February 25, 2003.</p> <p>21 Q. Help me out with that.</p> <p>22 MR. HARDIN: Can we go off the record a</p> <p>23 minute?</p> <p>24 (Off the record discussion.)</p>
<p style="text-align: right;">46</p> <p>1 of Training Bulletins?</p> <p>2 A. Yes.</p> <p>3 Q. And if you receive a Training Bulletin,</p> <p>4 are you expected to sign for them?</p> <p>5 A. You do not receive them.</p> <p>6 Q. By "receive" -- I understand they might</p> <p>7 just pass in front of you during roll call. But you're</p> <p>8 expected to sign that you've seen a Training Bulletin,</p> <p>9 at least?</p> <p>10 A. You're expected to sign that you've seen</p> <p>11 the Staff Notes.</p> <p>12 Q. Staff Notes that may include a Training</p> <p>13 Bulletin?</p> <p>14 A. May include, yes.</p> <p>15 Q. And when you sign saying that you've seen</p> <p>16 the Staff Notes, are you signing saying that you've</p> <p>17 read through the Staff Notes, or just that you've been</p> <p>18 given the opportunity to?</p> <p>19 A. That you've been given the opportunity to.</p> <p>20 Q. Were these Staff Notes from February 25,</p> <p>21 2003 -- you would have received them, right?</p> <p>22 MR. HARDIN: Objection.</p> <p>23 A. I wouldn't have received them.</p> <p>24 Q. Well, you would have seen them, right?</p>	<p style="text-align: right;">48</p> <p>1 Q. Is it consistent with your read of Exhibit</p> <p>2 4, that -- I mean, these Staff Notes would have been</p> <p>3 disseminated or read from, like, around February 25,</p> <p>4 2003?</p> <p>5 A. Yes.</p> <p>6 Q. And you would have been given the</p> <p>7 opportunity to read these?</p> <p>8 A. Yes.</p> <p>9 Q. And that would have been before November</p> <p>10 of 2003?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Does Slade Exhibit 4 refresh your</p> <p>13 recollection as to whether you received any training in</p> <p>14 positional asphyxia, prior to the death of Nate Jones?</p> <p>15 A. No.</p> <p>16 Q. It does not?</p> <p>17 A. No.</p> <p>18 Q. You were there -- I mean, you were there</p> <p>19 that early morning, right, at the White Castle?</p> <p>20 A. Yes.</p> <p>21 Q. And you were subject of an investigation</p> <p>22 into the death of Nate Jones, right?</p> <p>23 A. Yes.</p> <p>24 Q. I guess at least two investigations,</p>

## 13 (Pages 49 to 52)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">49</p> <p>1 right? The police internal investigation and the      2 Citizens Complaint Authority investigation, right?      3 A. Yes.      4 Q. And with regard to the police internal      5 investigation, you did not provide a statement, right?      6 A. No, that's incorrect.      7 Q. That is incorrect?      8 A. Yes.      9 Q. You did provide a statement?      10 A. To internal, yes.      11 Q. And when did you provide that statement?      12 A. I don't recall.      13 Q. Do you recall to whom?      14 A. No.      15 Q. Were you interviewed?      16 A. Yes.      17 Q. And there was a transcript of that      18 interview?      19 A. That's my understanding, yes.      20 Q. Do you recall asserting your right not to      21 incriminate yourself in response to a request for an      22 interview during the course of the --      23 MR. HARDIN: Objection to the question.      24 You may answer.</p>	<p style="text-align: right;">51</p> <p>1 A. Yes.      2 MR. THOMPSON: I'm going to have to go      3 back and check, but I don't have any transcript      4 of any testimony from any internal investigation      5 on him, either.      6 MR. STACKPOLE: Okay.      7 MR. THOMPSON: In fact, for all of the      8 named defendants with regard to internal      9 investigations. The only transcripts that I have      10 are those where they pled the Fifth.      11 MR. STACKPOLE: Those are the Homicide      12 investigation's, where they pled the fifth.      13 MR. HARDIN: It's CIS.      14 MR. STACKPOLE: I'll double check.      15 Q. In preparation for your deposition today,      16 did you review two transcripts of interviews, or one?      17 A. Three.      18 Q. Three? All where you answered questions,      19 or was one where you pled the fifth? When I say that,      20 you generally know what I mean? "On advice of counsel,      21 I refuse to answer."      22 A. Yes.      23 Q. One of them, you pled the Fifth?      24 A. Yes.</p>
<p style="text-align: right;">50</p> <p>1 Q. -- investigation?      2 Do you recall an interview where you said,      3 you know, on the advice of my counsel I'm not going to      4 answer questions?      5 A. Yes.      6 Q. Okay. And then there was some subsequent      7 interview, or some interview after that?      8 A. Yes.      9 Q. With police internal?      10 A. Yes.      11 Q. And that interview -- do you know if it      12 was taped?      13 A. That's my understanding, yes.      14 Q. And, I'm sorry, have you seen a written      15 transcript of that interview?      16 A. From?      17 Q. The one where you answered questions. You      18 responded to questions.      19 A. From internal?      20 Q. Yeah.      21 A. Yes.      22 Q. When is the last time you've seen that?      23 A. I've seen it this week.      24 Q. This week?</p>	<p style="text-align: right;">52</p> <p>1 MR. HARDIN: Objection to the questions      2 relating to pleading the Fifth. But go ahead.      3 Q. Okay. But two others where you answered      4 questions?      5 A. Yes.      6 Q. One before the CCA, the Citizen Complaint      7 Authority?      8 A. Yes.      9 MR. THOMPSON: Yeah, I don't have any      10 transcripts with any of these guys where they      11 actually answered questions, other than CCA.      12 MR. STACKPOLE: I know you've been given      13 the tapes. I don't know. The transcripts may be      14 things that -- well, off the record for a second.      15 MR. HARDIN: Can we take a break for a      16 minute?      17 MR. THOMPSON: Sure.      18 (At which time, a recess was taken from      19 10:45 a.m. until 10:54 a.m.)      20 MR. THOMPSON: All right. We'll go back      21 on the record.      22 Q. Jay, the CCA complaint, the interview you      23 participated in and provided a statement to those      24 interviewers, you've reviewed that in preparation -- or</p>

## 14 (Pages 53 to 56)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

53	55
<p>1 a transcript of that?</p> <p>2 A. Yes.</p> <p>3 Q. And I understand that you -- well, let's</p> <p>4 go back to November 30, 2003. And you were Unit No.</p> <p>5 5315?</p> <p>6 A. Yes.</p> <p>7 Q. Out of District 5?</p> <p>8 A. Yes.</p> <p>9 Q. And you stated that you were originally</p> <p>10 dispatched -- let me mark this.</p> <p>11 (Johnstone Deposition Exhibit No. 2 was</p> <p>12 marked for identification.)</p> <p>13 Q. Okay. Jay, you've been provided a</p> <p>14 transcript of that interview. I'm looking at Page 1.</p> <p>15 You indicate that you were originally dispatched with</p> <p>16 Officer Pike. But then you were disregarded by Officer</p> <p>17 Osterman. Can you tell me what that means?</p> <p>18 A. They, being Communication, dispatched two</p> <p>19 officers to White Castle's. Officer Pike and myself.</p> <p>20 It was in Beat 2, to the best of my recollection. I</p> <p>21 was not a Beat 2 officer; however, Officer Pike was.</p> <p>22 At some point, Officer Osterman became available, and</p> <p>23 he disregarded me, stating, you know, "Do not send</p> <p>24 Officer Johnstone, I will respond instead."</p>	<p>1 Q. It says, "Officer Pike, who came over and</p> <p>2 said it was going to be an MHRT run," right?</p> <p>3 A. Yes.</p> <p>4 Q. Has your recollection changed?</p> <p>5 A. No.</p> <p>6 Q. Have you talked with anyone? In addition</p> <p>7 to reviewing the two transcripts, what else have you</p> <p>8 done to prepare for your deposition?</p> <p>9 A. I spoke with my attorney, Don Hardin.</p> <p>10 Q. Okay. And did you speak with any of the</p> <p>11 officers?</p> <p>12 A. No.</p> <p>13 Q. None?</p> <p>14 A. No.</p> <p>15 Q. Did you speak with anyone else?</p> <p>16 A. No.</p> <p>17 Q. And Officer Shulte was MHRT, right?</p> <p>18 A. Yes.</p> <p>19 Q. Certified MHRT. And so he called in that</p> <p>20 he would respond to Officer Pike's MHRT call?</p> <p>21 A. Yes.</p> <p>22 Q. Then there's, "Officer needs assistance"</p> <p>23 call on that MHRT run, right?</p> <p>24 A. Yes.</p>
54	56
<p>1 MR. HARDIN: For the record, I'm going to</p> <p>2 object to the transcript, only because I can't</p> <p>3 tell you that it's authentic. Go ahead.</p> <p>4 Q. So Osterman instructed you not to respond?</p> <p>5 A. I would not take it as an instruction. He</p> <p>6 responds to the dispatcher that you can go ahead and</p> <p>7 disregard Officer Johnstone.</p> <p>8 Q. Okay. All right. And you were then</p> <p>9 dispatched to the burglary with Shulte?</p> <p>10 A. A burglar alarm.</p> <p>11 Q. And then, through dispatch, you came to</p> <p>12 understand that Officer Pike had called in an MHRT,</p> <p>13 right?</p> <p>14 A. I believe he came over and stated that it</p> <p>15 was possibly an MHRT.</p> <p>16 Q. Looking at this transcript, your</p> <p>17 recollection of the events was, I suppose, better on</p> <p>18 June 25, 2004, than it is today; is that a fair</p> <p>19 assumption?</p> <p>20 A. That would probably be accurate.</p> <p>21 Q. And this transcript does not indicate that</p> <p>22 it was your recollection then, that Officer Pike said,</p> <p>23 "It's possibly an MHRT," right?</p> <p>24 A. Yes.</p>	<p>1 Q. And you respond?</p> <p>2 A. Yes.</p> <p>3 Q. And when you get to the White Castle, you</p> <p>4 see officers struggling on the ground with Mr. Jones?</p> <p>5 A. Yes.</p> <p>6 Q. And specifically, you saw Officer Abrams</p> <p>7 attempting to cuff Mr. Jones' right arm; is that right?</p> <p>8 A. His left arm.</p> <p>9 Q. His left arm? Okay. And we'll talk about</p> <p>10 that struggle in a little bit. But after the struggle,</p> <p>11 do you recall anyone placing Nate Jones in a seated</p> <p>12 position?</p> <p>13 A. No.</p> <p>14 Q. Do you recall anyone trying to place him</p> <p>15 in a seated position?</p> <p>16 A. No.</p> <p>17 Q. Do you recall anyone suggesting that he</p> <p>18 ought to be placed in a seated position?</p> <p>19 A. No.</p> <p>20 Q. And that's at any point after the struggle</p> <p>21 from, you know, after the EMT arrives and they take him</p> <p>22 off to the hospital, right?</p> <p>23 A. Yes.</p> <p>24 Q. When you participated in the CCA</p>

## 15 (Pages 57 to 60)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">57</p> <p>1 investigation and the police intervention 2 investigation, when you actually provided responses to 3 the interview, were you truthful and honest? 4 A. Yes. 5 Q. If you turn to 07082. And for context, if 6 you want to read -- this is about that Training 7 Bulletin, 2003, the one on positional asphyxia. They 8 asked you if you received a copy. You indicated that 9 you do not remember if you did. They talked about the 10 Training Bulletin and the Staff Notes and so on. 11 And the interviewer asks, "Are those" -- 12 this is toward the middle of the page, Jay. "Are those 13 Training Bulletins normally something that is part of 14 roll call training, that's discussed by a supervisor at 15 roll call?" You indicate you're not sure if it's done 16 consistently or not. Do you see that? 17 A. Yes. 18 Q. And by your response, is it fair for me to 19 understand that -- that it may well be that a Training 20 Bulletin on positional asphyxia became a part of the -- 21 was incorporated in the Staff Notes, and that you could 22 have signed off on that Staff Notes, but that that 23 Training Bulletin may or may not have been discussed 24 during roll call, and you may or may not have read the</p>	<p style="text-align: right;">59</p> <p>1 A. Okay. 2 Q. Your response was, "There was just tension 3 in his arm. They were telling him to put his arm 4 behind his back; he was tensed up. He wasn't moving 5 his arm," right? 6 A. Yes. 7 Q. And that is what indicated to you that 8 Mr. Jones was resisting? 9 A. Yes. 10 Q. Now, you had no idea why Mr. Jones' arm 11 was tense, right? 12 A. No. 13 Q. And by "no," you mean you don't know, 14 right? 15 A. I don't know why it was tense. 16 Q. Why it was tense. Okay. And Mr. Jones 17 was a big guy, right? 18 A. Yes. 19 Q. Obese. And, in fact, I think you had to 20 use three pairs of handcuffs, or you were trying to use 21 three pairs of handcuffs just to get enough length to 22 get from one wrist to the other, behind his back, 23 right? 24 A. Yes.</p>
<p style="text-align: right;">58</p> <p>1 Training Bulletin; is that fair to say? 2 A. Yes. 3 Q. If you turn to 07083. You indicate -- and 4 you're talking about the trouble that Officer Abrams is 5 having getting the left arm behind Mr. Jones' back 6 cuffed, right? 7 A. Yes. 8 Q. And at that time, Mr. Jones is prone on 9 the ground, right? 10 A. Yes. 11 Q. And you were asked whether Mr. Jones was 12 resisting, right -- 13 A. Yes. 14 Q. -- the handcuffing process. And you 15 indicated that he was, right? 16 A. Yes. 17 Q. And you recall being asked why you thought 18 he was resisting? 19 A. No, I don't recall that. 20 Q. Well, do you recall being asked what you 21 meant when you indicated he was resisting? 22 A. I don't recall being asked that, no. 23 Q. It's on 07083, when they asked, "What do 24 you mean by resisting?"</p>	<p style="text-align: right;">60</p> <p>1 Q. Okay. And the tension that you perceived 2 in his arm, that didn't really indicate to you whether 3 that tension was a result of his size, perhaps the 4 position that he was in, versus a symptom of active 5 resisting, right? 6 MR. HARDIN: Objection. You may answer. 7 A. I'm not sure what you're asking. 8 Q. All right. Jones is prone on the ground. 9 The officers are having a hard time getting his left 10 arm behind his back, right, to get it cuffed? 11 A. Yes. 12 Q. And I think you said that that was 13 indicated to you by the tension in his arm, right? 14 A. Yes. 15 Q. Okay. You don't know whether that tension 16 was caused by his size, right? 17 A. Yes. 18 Q. You believe it was? 19 MR. HARDIN: Objection. 20 A. I'm not sure what you're asking. 21 Q. The tension that was in his arm -- the 22 difficulty in getting his arm behind his back, that 23 was, in part, due to Mr. Jones' size? 24 A. That's not what I believe.</p>

## 16 (Pages 61 to 64)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p style="text-align: right;">61</p> <p>1 Q. That is not what you believe?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. I believe he was resisting by keeping his 5 arm tensed.</p> <p>6 Q. Okay. It was that tension that indicated 7 to you that he was resisting?</p> <p>8 A. Yes.</p> <p>9 Q. Was anyone holding Mr. Jones down at the 10 time?</p> <p>11 A. I believe Officer Joehonny was holding his 12 legs, and Officer Slade was holding his right arm 13 behind his back.</p> <p>14 Q. And presumably, placing pressure on his 15 right arm behind his back, right?</p> <p>16 MR. HARDIN: Objection. You may answer.</p> <p>17 A. I'm not sure what kind of pressure was 18 being applied.</p> <p>19 Q. Okay. And were the officers on his legs, 20 on his lower legs or upper legs?</p> <p>21 A. I don't recall.</p> <p>22 Q. When the officers realized -- after the 23 struggle and the officers stood up, checked on each 24 other, at some point, someone realized that there was</p>	<p style="text-align: right;">63</p> <p>1 A. No.</p> <p>2 Q. He was not?</p> <p>3 A. Not when I saw him.</p> <p>4 Q. What position was he in when you saw him?</p> <p>5 A. He had been rolled over onto his back.</p> <p>6 Q. So you saw him -- so, after you stood up, 7 the next view of Mr. Jones you had was of Mr. Jones 8 lying on his back?</p> <p>9 A. Yes.</p> <p>10 Q. After someone had rolled him over?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recall who rolled him over?</p> <p>13 A. No.</p> <p>14 Q. Do you recall why he was rolled over? Did 15 you see him rolled over?</p> <p>16 I mean, did you see him when he was rolled 17 over? Did you watch that?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you have an understanding as to why he 20 was rolled over?</p> <p>21 A. I have an understanding now, yes.</p> <p>22 Q. Well, what is your understanding now?</p> <p>23 A. To avoid positional asphyxiation.</p> <p>24 Q. What was your understanding then?</p>
<p style="text-align: right;">62</p> <p>1 something wrong with Mr. Jones, right?</p> <p>2 A. Yes.</p> <p>3 Q. And in particular, it didn't appear like 4 he was breathing, right?</p> <p>5 A. I don't recall what they saw.</p> <p>6 Q. You don't recall? What did you see?</p> <p>7 A. I didn't see anything pertaining to 8 Mr. Jones directly after the struggle.</p> <p>9 Q. Okay. After you stood up, what did you 10 do?</p> <p>11 A. Caught my breath.</p> <p>12 Q. Okay.</p> <p>13 A. Checked on the other officers that were 14 there.</p> <p>15 Q. Okay. Anything else?</p> <p>16 A. I spoke with the other officers.</p> <p>17 Q. But did you see Mr. Jones laying on the 18 ground?</p> <p>19 A. Not immediately, no.</p> <p>20 Q. At any point, after you stood up?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And he was in the prone position, 23 handcuffed behind -- arms handcuffed behind his back, 24 right?</p>	<p style="text-align: right;">64</p> <p>1 A. My understanding then? I was vaguely 2 familiar with positional asphyxiation.</p> <p>3 Q. Do you think that -- do you think that 4 including a Training Bulletin on positional 5 asphyxiation in Staff Notes, where the information in 6 that Training Bulletin may or may not be read during 7 roll call, may or may not be read by the officers who 8 are signing off on the Staff Notes, do you think that 9 that constitutes adequate training for you as a police 10 officer on positional asphyxia?</p> <p>11 MR. HARDIN: Objection.</p> <p>12 MR. STACKPOLE: Objection.</p> <p>13 A. I don't think it constitutes formal 14 training, no.</p> <p>15 Q. Well, do you feel like you were adequately 16 trained?</p> <p>17 MR. STACKPOLE: Objection.</p> <p>18 Q. I mean, when you testified -- or when you 19 responded to these questions during the course of the 20 interview, you indicated that you were only vaguely 21 familiar with the term "positional asphyxia." You 22 recall that, right?</p> <p>23 A. Yes.</p> <p>24 Q. You didn't really know any of the factors,</p>

## 17 (Pages 65 to 68)

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

<p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. And you stated that at the time, that you</p> <p>4 didn't know what steps should be taken to avoid</p> <p>5 positional asphyxia after a struggle, right?</p> <p>6 A. Yes.</p> <p>7 Q. And I think even today, as you sit here,</p> <p>8 you don't really know, right?</p> <p>9 MR. STACKPOLE: Objection.</p> <p>10 A. I know more than I knew then.</p> <p>11 Q. Right. Okay. Do you feel like you were</p> <p>12 adequately -- do you feel like you had the training</p> <p>13 required to avoid positional asphyxia?</p> <p>14 MR. STACKPOLE: Objection.</p> <p>15 A. Now?</p> <p>16 Q. Then.</p> <p>17 A. Then?</p> <p>18 Q. Yeah.</p> <p>19 A. No.</p> <p>20 Q. It doesn't seem like thorough training at</p> <p>21 all, if it's training at all, to throw a Training</p> <p>22 Bulletin into Staff Notes and have you sign off on it,</p> <p>23 whether you've read them or not, whether they've been</p> <p>24 read to you or not, right?</p>	<p>65</p> <p>1 A. Not that I remember.</p> <p>2 MR. THOMPSON: I don't have any further</p> <p>3 questions for you today, Jay.</p> <p>4 There are some documents that we requested</p> <p>5 that we haven't received with regard to your</p> <p>6 personnel files, disciplinary actions -- or,</p> <p>7 pardon me, complaint investigations and so on.</p> <p>8 And so to the extent necessary to question you on</p> <p>9 those, if we have to, we're going to hold the</p> <p>10 deposition open. Okay?</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. THOMPSON: All right. Very good.</p> <p>13</p> <p>14</p> <hr/> <p style="text-align: center;">JAY JOHNSTONE</p> <p>15</p> <p>16</p> <p>17 DEPOSITION CONCLUDED AT 11:17 A.M.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>1 MR. STACKPOLE: Objection.</p> <p>2 Q. You would agree with that, right?</p> <p>3 A. No. I'm not sure what you're asking me.</p> <p>4 Q. Well, would you call that thorough</p> <p>5 training that you received -- would you call putting a</p> <p>6 Training Bulletin into Staff Notes --</p> <p>7 MR. STACKPOLE: Objection.</p> <p>8 Q. -- and then requiring you to sign off on</p> <p>9 it, whether you've read them, whether they have been</p> <p>10 read to you. Would you consider that to constitute</p> <p>11 thorough training?</p> <p>12 MR. STACKPOLE: Objection.</p> <p>13 A. I don't believe it's even considered</p> <p>14 training.</p> <p>15 Q. Right. You wouldn't even call that</p> <p>16 training?</p> <p>17 A. Correct.</p> <p>18 Q. Have you ever seen a -- either at the</p> <p>19 Academy or anywhere, anywhere in the physical plant,</p> <p>20 Cincinnati Police Department, ever seen, like, a poster</p> <p>21 about positional asphyxia?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Nothing that shows the factors and steps</p> <p>24 to take to avoid it and so on?</p>	<p>66</p> <p>1 CERTIFICATE</p> <p>2 STATE OF OHIO : : ss</p> <p>3 COUNTY OF HAMILTON : I, Barbara A. Thacker, RPR, the</p> <p>4 undersigned, a duly qualified and commissioned notary</p> <p>5 public within and for the State of Ohio, do hereby</p> <p>6 certify that, before giving of the aforesaid</p> <p>7 deposition, JAY JOHNSTONE, was by me first duly sworn</p> <p>8 to depose the truth, the whole truth, and nothing but</p> <p>9 the truth; that the foregoing is the deposition given</p> <p>10 at said time and place by JAY JOHNSTONE; that said</p> <p>11 deposition was taken in all respects pursuant to</p> <p>12 stipulations of counsel hereinbefore set forth; that I</p> <p>13 am neither a relative of nor employee of any of their</p> <p>14 counsel, and have no interest whatever in the result of</p> <p>15 the action. I further certify that I am not, nor is</p> <p>16 the court reporting firm with which I am affiliated,</p> <p>17 under a contract as defined in Civil Rule 28(D).</p> <p>18 IN WITNESS WHEREOF, I hereunto set my hand</p> <p>19 and official seal of office at Cincinnati, Ohio, this</p> <p>20 day of _____, 2009.</p> <p>21</p> <p>22</p> <p>23 My Commission Expires: BARBARA A. THACKER, RPR May 17, 2013 Notary Public - State of Ohio</p> <p>24</p>

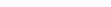
## ADDENDUM

TO THE REPORTER: I have read the entire transcript of my deposition taken on the 5th day of October, 2009 or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the following changes to the original transcript:

10-5-69

(Date)

**BESSIE JONES vs. CITY OF CINCINNATI**

  
(Signature of Deponee)

**(Signature of Deponent)**

JAY JOHNSTONE 9-9-09

-9-09

BT

## ORIGINAL

AMS DEPO

P.O. Box 58641 · Cincinnati, Ohio 45258-8641  
(513) 941-9464

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

Page 67

1 A. Not that I remember.

2 MR. THOMPSON: I don't have any further  
3 questions for you today, Jay.

4 There are some documents that we requested  
5 that we haven't received with regard to your  
6 personnel files, disciplinary actions -- or,  
7 pardon me, complaint investigations and so on.

8 And so to the extent necessary to question you on  
9 those, if we have to, we're going to hold the  
10 deposition open. Okay?

11 THE WITNESS: Okay.

12 MR. THOMPSON: All right. Very good.

13   
14 JAY JOHNSTONE

15 - - -

16 DEPOSITION CONCLUDED AT 11:17 A.M.

17 - - -

18  
19  
20  
21  
22  
23  
24

Jones, B. vs. City of Cinti.

JOHNSTONE, J.

9/9/2009

Page 68

## 1                   C E R T I F I C A T E

2                   STATE OF OHIO                   :                     
 3                   COUNTY OF HAMILTON               :                   ss

4                   I, Barbara A. Thacker, RPR, the  
 5                   undersigned, a duly qualified and commissioned notary  
 6                   public within and for the State of Ohio, do hereby  
 7                   certify that, before giving of the aforesaid  
 8                   deposition, JAY JOHNSTONE, was by me first duly sworn  
 9                   to depose the truth, the whole truth, and nothing but  
 10                  the truth; that the foregoing is the deposition given  
 11                  at said time and place by JAY JOHNSTONE; that said  
 12                  deposition was taken in all respects pursuant to  
 13                  stipulations of counsel hereinbefore set forth; that I  
 14                  am neither a relative of nor employee of any of their  
 15                  counsel, and have no interest whatever in the result of  
 16                  the action. I further certify that I am not, nor is  
 17                  the court reporting firm with which I am affiliated,  
 18                  under a contract as defined in Civil Rule 28(D).

19                  IN WITNESS WHEREOF, I hereunto set my hand  
 20                  and official seal of office at Cincinnati, Ohio, this  
 21                  13<sup>th</sup> day of October, 2009.

22                  *Barbara A. Thacker*

23                  My Commission Expires:           BARBARA A. THACKER, RPR  
 24                  May 17, 2013                           Notary Public - State of Ohio